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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-217430

DATE: January 18, 1985

MATTER OF: Cosmos Engineering, Inc.

DIGEST:

A protest alleging improprieties which do not exist in the initial solicitation but which are subsequently incorporated therein must be filed not later than the next closing date for receipt of proposals or it is untimely and will not be considered.

Cosmos Engineering, Inc. protests a November 7, 1984, amendment to the Drug Enforcement Administration's request for proposals (RFP) No. RFP-DEA-84-18. Cosmos contends that the amendment left too little time between the November 16, 1984, closing date for receipt of best and final offers and the December 1, 1984, date for commencement of contract performance.

This protest was filed on December 18, 1984, and is untimely under our Bid Protest Procedures, which require that a protest against improprieties incorporated into a solicitation by an amendment be filed not later than the next closing date for the receipt of proposals. 4 C.F.R. § 21.2(b)(1) (1984). The basis for Cosmos' protest was apparent from the November 7 amendment to the RFP and, therefore, any protest regarding the alleged impropriety in the solicitation caused by the amendment should have been filed by the November 16 date for the receipt of best and final offers. Native American Management Services, Inc., B-216282, Sept. 17, 1984, 84-2 CPD ¶ 304.

The only exception to this rule is where the protester does not receive the amendment which creates the alleged defect until too soon before the next closing date to file a timely protest. Receipt of such an amendment one day before a bid opening has been held to be a sufficiently short time to invoke this exception. The Big Picture Company, B-210535, Feb. 17, 1983, 83-1 CPD ¶ 166. Here, however, the exception is inapplicable,

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since Cosmos says that it received notice of the subject amendment and its contents on November 7, which was seven working days before the closing date for best and final proposals. Therefore, Cosmos was not deprived of a reasonable opportunity to file a timely protest. See Cybermedic, B-200628, May 19, 1981, 81-1 CPD ¶ 380.

Additionally, although Cosmos complained in its best and final offer that the December 1 date for commencing performance was "unrealistic and unperformable by any contractor other than the incumbent," a protest filed with a proposal is not a timely protest. Trident Motors, Inc., B-213458, Feb. 2, 1984, 84-1 CPD ¶ 142.

Cosmos has requested reimbursement of its proposal preparation costs. However, a claim for such preparation costs which is submitted in connection with an untimely protest will not be considered by our Office. See The Big Picture Company, supra.

The protest and claim are dismissed.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel